

JEFFERSON COUNTY COMMISSIONERS
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KEN WEBER, CHAIR

CHUCK NOTBOHM

TOM LYTHGOE

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
November 25, 2008**

Present: Commissioners Lythgoe, Notbohm and Weber; Matt Johnson, County Attorney; Harold Stepper, County Planner; Sam Little, Weed Coordinator; Marga Lincoln, *Helena Independent Record*; Dave Kirsch, Don and Jennifer Hoerauf

MINUTES

Commissioner Weber moved to adopt the minutes of November 5. Commissioner Lythgoe seconded. The motion carried.

CALENDAR REVIEW

11/27 & 28 County Offices closed for Thanksgiving
12/02 Whitehall School Board meeting - 7:00

COMMISSION REPORTS

ZONING COMMISSION

Commissioner Notbohm reported that last Thursday he attended the zoning commission meeting.
RSID/RMD

Commissioner Lythgoe reported that Jason Knopp and Bill Lloyd from Great West and he met with several residents of Jack Mountain Estates and upper Jackson Creek. There is a RSID/RMD that is being proposed for that area, and this was a preliminary, informational meeting. They are now waiting to hear if the residents wish to proceed.

CENTER FOR MENTAL HEALTH

Commissioner Lythgoe reported on the Center for Mental Health meeting held in Great Falls Monday. Mike McLaughlin is leaving as Director and has been replaced with someone in-house. There was discussion of the crisis centers to be opened in Great Falls and Helena. St. Peter's will be opening a psyche unit in May, which is much needed in this area.

SOLID WASTE BOARD

Commissioner Weber reported on the Solid Waste Board meeting. The discussion continues on charging a fee for taking tires. It is getting more and more expensive for the Solid Waste District to deal with tires. This is still in the research and discussion phase. The board also discussed having the tires hauled away rather than burying them. The board also continues to look at assessments being charged to businesses. These have not been reviewed since they were first assessed in 1996. There was also discussion of the Jefferson City site. Joe had brought forward a petition to close Spring Street in Jefferson City with the thought of making it a secure site. The Solid Waste Board talked about having a clear plan, as well as a funding source, before they go forward with this. The other discussion is regarding electricity in Clancy. The attendants are working in the dark at night, and Joe has been trying to find a way to get power to that site. The costs are way over the budgeted amount.

NORTH-END LIBRARY SUBCOMMITTEE

The north-end library subcommittee has adopted the NEPA process in identifying north Jefferson County library needs, and will be reporting back to the library board for any needs found and possible solutions. It will probably be several months before a report is ready.

RECOUNT

Commissioner Lythgoe noted that on Wednesday, the Commission took part in a recount of the ballots regarding the public safety mill levy. At first blush, it seemed that the levy passed by one vote. There were some petitions for a recount, which was done. They manually counted all of the ballots, and actually gained two votes. The Public Safety mill levy passed by three votes. He would suggest that if a vote comes within 1 percent, there should be an automatic manual recount. Commissioner Weber stated that he thinks that the process is laid out in state law. Commissioner Lythgoe stated that the Commission can ask for a recount if it is that close, rather than waiting for a member of the public to come forward.

SUBDIVISION REVIEW

DISCUSS AND DECIDE ON LIFTING AG COVENANT – DON & JENNIFER HOERAUF

Harold Stepper, County Planner, stated that an ag covenant was placed on this parcel some time ago. The owners would like the covenant lifted. The land is relatively poor for agriculture and there is no water. Commissioner Weber asked if the other two tracts have ag covenants on them also. Harold stated that they do. Commissioner Lythgoe asked why it wouldn't be considered lifting the ag covenant on the other two tracts. Don Hoerauf stated that those tracts belong to other family members, and they have not requested that the covenant be lifted. It was suggested by their real estate agent that the ag covenant be removed, so that the land would be easier to sell. Commissioner Weber asked if they have grazed any animals on the property in the past. Mr. Hoerauf stated that they have had horses, but they have to haul water.

The resolution was presented as follows:

RESOLUTION 45-2008

RESOLUTION TO LIFT AGRICULTURAL COVENANT ON TRACT 2 IN SECTION 32, TOWNSHIP 2 NORTH, RANGE 5 WEST KNOWN AS DON AND JENNIFER HOERAUF PROPERTY

WHEREAS, a previous landowner within the family filed a Certificate of Survey with the Jefferson Countyh Clerk and Recorder to create an agricultural covenant on Tract 2; and,

WHEREAS, Don and Jennifer Hoerauf have subsequently purchased the property from the family member; and,

WHEREAS, Don and Jennifer Hoerauf wish to sell the property with no encumbrances on the property so they may retire;

NOW, THEREFORE, BE IT RESOLVED by mutual consent by the Jefferson County Board of County Commissioners and Don and Jennifer Hoerauf revoke the agricultural covenant on Tract 2 in Section 32, Township 2 North, Range 5 West.

Commissioner Weber moved to adopt resolution 45-2008 Lifting the Ag Covenant. Commissioner Notbohm seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

APPOINT VIEWERS FOR PETITION TO CLOSE AND DISCONTINUE THAT PORTION OF A POSSIBLE COUNTY ROAD IN SECTION 17 T9N R3W

Commissioner Weber stated that there is some confusion, and the landowners are concerned that the petition that the Commission acted on in the past didn't carry the abandonment all the way to the BLM property, so they came forward with another petition. Commissioner Lythgoe stated that he thinks that there is more to it than that.

Matt Johnson, County Attorney, stated that at the last court hearing over this issue, there was a question over whether the petition showed the "x" in the middle of the property, rather than at the border of the property. The Commission ruled to abandon all the way up to the border of the BLM, however there were some people present in court that went back to the landowner and said there was still an issue and asked if they wanted it abandoned all the way through the property. As this was the wish of the landowner, they felt it was important to have this reviewed. Matt stated that he thinks it most appropriate to treat it as basically an abandonment of any interest in a public road that may be on this landowner's property. Matt stated that we have a policy in place that road abandonments be viewed by one Commissioner and one person of the Commission's choosing. Commissioner Lythgoe asked if this petition includes any road that might have been on

that property, or are they still talking about a singular path. Matt stated that he has drawn up a draft resolution that states “it is a possible road that may lie across any portion of Dorothy Hill’s property”. He noted that the on-going issue is still whether historically there was ever a county road or a public road. This is still being fought in court.

Commissioner Notbohm stated that this has gone back and forth for some time. Under the circumstances, he has a few problems with this. One of them is that he can’t understand how they can abandon something that was declared not a county road. He is sure that it is a county road. Also, there are several individuals that claim that they have used the road for access for years and that it is, in fact, a public road.

Matt stated that each individual Commissioner can have their own opinion of what is or isn’t a county road. He noted that the District Court still hasn’t made its decision. It is Dorothy Hill’s contention that since her family has owned the property, they haven’t allowed the public to go back and forth on that road. His office has done some extensive research and hasn’t found a petition to establish a county road; at best it could be a prescriptive easement based on past use.

Commissioner Lythgoe stated that for the record, he spoke with Bonnie Bompert just last week. She owns half of the Bompert property up there. She claims that her family has accessed their property through the Hill property for many years. He neglected to ask her how many years they haven’t accessed their property that way, but he knows that it has been a number of years. Matt stated that in looking at the maps, Holmes Gulch Road goes right through the Bompert property, so there is access there, as well as a road that was agreed upon in a lawsuit between Bomperts and Joe Schmaus.

Commissioner Weber stated that he needs to stop this discussion until the next meeting; the item on the current agenda is the appointment of viewers. He noted that he viewed this road in the past for a previous petition. He asked Commissioner Lythgoe if he would mind viewing the road. Commissioner Lythgoe stated that he would be willing to do that, and would suggest that Melissa Morris go with him.

Commissioner Weber moved to appoint Commissioner Lythgoe and Melissa Morris to view the road. Commissioner Lythgoe seconded. The motion carried, with Commissioner Weber and Commissioner Lythgoe voting aye and Commissioner Notbohm voting nay.

DISCUSS AND DECIDE ON THE ADOPTION OF RESOLUTION REGARDING COUNTY’S COORDINATION WITH STATE AND FEDERAL AGENCIES

Matt stated that coordination is where local governments utilize existing laws that require the federal and state agencies to work with local government to conduct government business. We are asking for equal importance with what state and federal agencies are doing in our county, on the decisions they make. Jefferson County has their own planning documents and growth policy that speaks about coordinating with the federal government and state agencies. We do have a good working relationship with most federal agencies, but we aren’t treated equally, but more like a subordinate. There is authority to coordinate with local governments found in most federal land use statutes including the Federal Land Policy and Management Act, the National Forest

Management Act, the National Environmental Policy Act, Endangered Species Act – which requires that local planning be considered, the Wild and Scenic River Act, Clean Water Act, and even the Homeland Security Act. By statute, coordination means early notification, prior to public notice, to the local government of all actions or plans of the federal agency that will affect the local units of government. Further, agencies are required to consider the local government's policy or plan when working on federal policy, plan, or action, and most importantly, the agency is required to make all practical effort to make the federal policy, plan or action consistent with the local government's policy or plan, including our growth policy. Matt stated that he is seeking consistency, which he doesn't feel we have had in our dealings with the federal agencies. He noted that over 70% of the lands in Jefferson County are managed by federal agencies. To gain maximum impact from coordination status, a local government must develop and adopt a local land use management plan which defines the natural resource priorities in terms of economic, social, political, customs, and culture of the community. All local industries and uses that make up the economic strength of the community should be prioritized with regard to their dependence upon and impact upon the natural resource environment. We have a growth policy that addresses this to some degree, but he feels that we need to draw up a greater plan.

Matt stated that we aren't looking for anything more than having a say in what happens in Jefferson County with each of these decisions made by these different agencies of the federal and state government. He would propose that the Commission form a resource advisory task force to review and work on finalizing a plan, and that his office work on creating the plan. Basically what we want is to have the coordination with the federal and state governments, as well as with other counties. Something that is out there that no one has talked to us about is the watershed for the Missouri River.

After adoption of the resolution, he will need available dates for the Commission to meet with agencies. He would draft a letter asking for coordination before finalization of their plans. This would include, most importantly, the Beaverhead-Deer Lodge National Forest because they have a plan that is to go public fairly soon, and this is one that he believes that we need to ask them to coordinate with us on before they finalize it. It does have some impact on some roads and trails that would be closed that a local trail group wants to have open for some tourism. Available dates will allow for invitations to meet and discuss how to implement the coordination, and then draw up a MOU. We also need to form the resource advisory group, and he would suggest that each of the Commissioners sit on that board.

Commissioner Notbohm asked if by adopting this resolution, it would require the state and federal agencies to come to the table. Matt stated that experience says that they may try not to exercise that right, but then we would send them a second or even third letter. This would allow that if they suddenly come up with a plan in the future that we have never seen or heard before, they obviously didn't have that coordination and we would have recourse.

Commissioner Lythgoe stated that they actually should have been coming to us and requesting this, as it is in their guidelines and mode of operation that they should be coming to us. Matt agreed that it is in their guidelines, especially the BLM. FLPMA specifically states five areas of coordination that they must follow through with. Commissioner Weber stated that our comments recently sent to the Beaverhead-Deer Lodge noted that we have expected this and haven't gotten

it. Matt stated that whether this can help us with the Beaverhead-Deer Lodge travel plan coming forward, he won't say; they may say that it is too late. He believes that the federal agencies should have been in coordination and we have a right to appeal the whole decision.

Commissioner Notbohm stated that the Elkhorn was the first big travel plan. Coordination didn't take place at that time, and the public meetings were a farce. With the red forest coming this way, it is a real good time to press some of those points on public access and the ability to get into the forest to maintain it. Matt stated that this is one of our issues of planning that local government and the Forest Service should be discussing now before a plan is created, and hopefully we can get a plan created.

RESOLUTION 41-2008 EXERCISING THE COUNTY'S COORDINATION EFFORTS WITH
STATE AND FEDERAL AGENCIES

Commissioner Weber read the resolution as follows:

RESOLUTION 41-2008

**ASSERTING JEFFERSON COUNTY'S LEGAL STANDING AND REQUESTING
COORDINATION WITH ALL FEDERAL AND STATE AGENCIES MAINTAINING
JURISDICTION OVER LANDS AND/OR RESOURCES LOCATED WITHIN
JEFFERSON COUNTY, MONTANA**

WHEREAS, the Board recognizes its mandate provided in Montana statutes to (1) protect and enhance the public health, safety, and welfare of the citizens of the County, (2) protect the tax base and encourage the economic stability of the County, and (3) encourage the agriculture and forestry industries and other businesses for future growth; and

WHEREAS, the State of Montana has enacted laws which empower the Board of County Commissioners to develop land use, resource management, and environmental planning processes necessary to serve the public health, safety, convenience, and welfare; and

WHEREAS, laws and regulations of the United States ("Federal Laws") and of the State of Montana ("State Laws") mandate that planning and actions of the Federal and State agencies must be coordinated with the plans of local government, these specific laws being in part the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the National Forest Management Act (NFMA) and the Montana Environmental Policy Act (MEPA); and

WHEREAS, community values that express and guide Jefferson County's comprehensive plan, known as the Jefferson County Growth Policy, are: to sustain and strengthen the economic well-being of Jefferson County's citizens; to protect and maintain Jefferson County's rural character and the community's historic relationship with natural resource development; and to preserve and enhance the rural, friendly and independent lifestyle currently enjoyed by Jefferson County's citizens, and

WHEREAS, the Jefferson County Growth Policy provides for intergovernmental coordination by instituting regular meetings with state and federal agencies that control substantial property in Jefferson County to ensure full consideration of county concerns as policies are formulated concerning issues including public access, wildlife management, grazing rights, and fire suppression. The Growth Policy further mandates the involvement and interaction between local government and the state and federal government in all phases of planning. As decisions made at the state and or federal level can significantly impact local governments, Jefferson County's Growth Policy finds that it is imperative that communication exists between all levels of government, and

WHEREAS, the Board has passed resolutions that support Jefferson County's reliance upon natural resources including Resolution 31-2002, a Resolution to Adopt a Right to Farm and Ranch Policy, Resolution 31-2004, a Resolution to Adopt a Right to Mine Policy, Resolution 32-2004, a Resolution of the County Commissioners of Jefferson County, Supporting Active Forest Management, and Resolution 06-2006, a Resolution Supporting Mineral Exploration in Jefferson County, and

WHEREAS, the Board recognizes the need for a reliable source of funds from use of resources on Federal lands wherefore Federal Lands comprise approximately 70% of land ownership within Jefferson County; and

WHEREAS, State owned land is found in the County and the Board recognizes its legitimate interest in the management of that State land; and

WHEREAS, the economic base and stability of Jefferson County is largely dependent upon commercial and business activities operated on Federal and State owned, managed, and/or regulated lands that include, but are not limited to recreation, tourism, timber harvesting, mining,

livestock grazing, and other commercial pursuits, and

WHEREAS, NEPA states that Federal agencies must coordinate their management plans and actions with local government plans to make them consistent and requires assessment of the direct, indirect, and cumulative effects of Federal agency planning decisions on the environment including the ecological, aesthetic, historic, cultural, economic and other impacts that may occur as a result of private and/or governmental actions; and

WHEREAS, the Board implements coordination of Federal land management with the County to promote sustainable revenue from the Federal Lands; and

WHEREAS, the Board recognizes the applicability of the aforementioned Federal Laws and State Laws to its duties and requires full participation of the Board in the planning and regulatory processes of all Federal and State agencies which have any jurisdiction within the County; and

WHEREAS, the Board recognizes that meaningful local government involvement requires more than the timely exchange of information and places an additional responsibility on Federal and State agencies to incorporate the goals, objectives and policies of local government into Federal and State plans and decisions affecting any area under the local government's jurisdiction; and

WHEREAS, the Board desires to continue developing a policy to facilitate Federal and State coordination with the County including the creation of a county natural resource advisory task force and the development of a resource plan by said task force.

NOW, THEREFORE, BE IT RESOLVED that the Board requires that all Federal and State planning and actions affecting the County be coordinated with the County adopted plans, resolutions, and ordinances, and

BE IT FURTHER RESOLVED, that all Federal and State agencies administering land or conducting activities in the County be notified of adoption of this resolution implementing coordination.

PASSED AND ADOPTED by the Jefferson County Board of County Commissioners this 25th day of November, 2008.

Dated this 25th day of November, 2008.

BOARD OF COUNTY COMMISSIONERS
Jefferson County, Montana

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

KEN WEBER, CHAIR

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER

Sam Little, Jefferson County Weed Coordinator, stated that he has a lot of coordination with state and federal agencies in his line of work. A lot of this comes down to dollars and cents. This would make things a lot easier.

Commissioner Lythgoe moved to adopt the resolution. Commissioner Notbohm seconded. The motion carried.

Matt asked that he be provided dates in mid-December for meetings, as well as language for the letters he will be sending out.

Commissioner Weber moved to adjourn. Commissioner Notbohm seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

KEN WEBER, CHAIR

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER